

# THE UNITED STATES

## *Bill of Rights*

### **CRITICAL ENGAGEMENT QUESTION**

How does the Bill of Rights protect liberty?

### **OVERVIEW**

The addition of the Bill of Rights to the Constitution was celebrated as a victory for the champions of individual liberty. But for the Bill of Rights to remain more than what Madison referred to as a “parchment barrier,” citizens must understand the content and meaning of this most important American document. In this lesson, students will identify and analyze the protections in the Bill of Rights, as well as evaluate Supreme Court decisions in cases centered on Bill of Rights protections.

## OBJECTIVES

Students will:

- identify the liberties protected in the Bill of Rights
- understand major historical events that led to Madison's proposal of amendments in Congress
- understand the purpose of the Bill of Rights
- analyze and apply provisions of the Bill of Rights through guided scenarios
- evaluate Supreme Court rulings on cases centered on the Bill of Rights
- appreciate the importance of the Bill of Rights in safeguarding individual liberty

## STANDARDS

NCHS: Era 3, Standard 3B

CCE: IIA1, IIA2, IIC1, IIIA1, VB1, VB2

NCSS: Strands 2, 5, 6, and 10

## STUDENT MATERIALS

**Background Essay:** Why a Bill of Rights?

**Handout A:** Fundamental Rights?

**Handout B:** The United States Bill of Rights

**Handout C:** YOU Be the Judge!

**Handout D:** Outcome Discussion Cards

**Handout E:** The Bill of Rights Today

## TEACHER MATERIALS

Answer Key

## GRADE LEVEL / TIME

One 45-minute high school class

## BACKGROUND/HOMEWORK

Have students read **Background Essay: Why a Bill of Rights?** and answer the critical thinking questions.

## WARM-UP ACTIVITY

[10 minutes]

- Distribute **Handout A: Fundamental Rights?**
- Put students into groups of four and instruct them to briefly discuss and list the rights they would include if drafting a document designed to protect liberties. They should include a brief rationale statement for the rights they chose to protect.
- Have one or two groups share their lists, and ask the remaining groups to identify similar rights in their list. Discuss the similarities and differences in the rights that groups proposed. You may wish to ask:
  - *Are there rights common to all groups?*
  - *Does this commonality reveal the rights Americans have historically deemed to be fundamental?*
- Distribute or put up an overhead of **Handout B: The United States Bill of Rights**. Conclude by locating common protections within the U.S. Bill of Rights. How do student proposals compare to the Bill of Rights?

## ACTIVITY

[25 minutes]

- Divide the class into eight groups and distribute **Handout C: YOU Be the Judge**.
- Assigning one scenario to each group, instruct students to read and discuss their scenario. They should then discuss and answer the two questions at the end. Allow groups a few minutes to complete this part of the activity.
- Once all groups have finished, reconvene the class and ask the group which worked on Scenario 1 to read their situation to the class. They should then report their answers to the questions. As a large group, locate the rights/amendments involved (*see Answer Key*). Conduct a class vote, by a show of hands, for a majority ruling in each scenario. Continue until all scenarios have been presented.
- Keep a running list on the board of student "rulings" on each case.

## WRAP UP

[15 minutes]

- A. Distribute the cards on **Handout D: Outcome Discussion Cards** to students who are strong readers. Point out to students that the fictional scenarios they just discussed were all based on actual Supreme Court cases. Have them read the Supreme Court rulings for each scenario and allow class discussion on each.
- B. Ask students if they agree with the Court's rulings. What differences were there between student rulings and the rulings of the Court?
- C. Conduct a large group discussion to answer the questions:
  - *How does the Bill of Rights protect liberty?*
  - *At their core, what do the protections in the Bill of Rights have in common?*

## HOMEWORK/EXTENSION OPTIONS

- A. Distribute **Handout E: The Bill of Rights Today**. Have students research recent/current news stories that illustrate the individual rights and protections guaranteed by the Bill of Rights. Students could begin by searching the Bill of Rights Institute web site, [www.BillofRightsInstitute.org](http://www.BillofRightsInstitute.org), and reviewing the "Bill of Rights In the News" links. Students should locate at least four examples and complete the graphic organizer to summarize the stories and draw connections to their lives.
- B. Have students choose one of the actual cases from today's activity. For the case they choose, instruct students to write either a one-page concurring opinion, in agreement with the Supreme Court's decision, or a one-page dissenting opinion, objecting to the Court's decision. Students can begin their research at [www.CitizenBee.org](http://www.CitizenBee.org).

## WHY A BILL OF RIGHTS?

The Constitution of the United States was written during the summer of 1787. That September it was sent to the states for ratification. Nine of the thirteen states would have to ratify it for the Constitution to become effective for those ratifying states. The future was not certain at all—a debate began among the states over ratification. Those who argued that the Constitution should be approved were called Federalists; those who argued against it were called Anti-Federalists.

One of the many points of contention between these two groups was the Constitution's lack of a bill of rights. A bill of rights would place specific limits on government power. Federalists argued that the Constitution did not need a bill of rights, because the people and the states kept any powers not given to the federal government.

Anti-Federalists held that a bill of rights was necessary to safeguard individual liberty.

Many of the state conventions ratified the Constitution, but called for amendments specifically protecting individual rights from abridgement by the federal government. The debate raged for months. By June of 1788, nine states had ratified the Constitution, ensuring it would go into effect for those nine states. However, key states including Virginia and New York had not ratified. James Madison, the principal author of the Constitution, knew that grave doubts would be cast on the Constitution if those states (the home states of several of its chief architects, including Madison himself) did not adopt it.

**Many of the state conventions ratified the Constitution, but called for amendments specifically protecting individual rights from abridgement by the federal government.**

During the ratification debate in Virginia, James Madison promised that a bill of rights would be added after ratification. His promise reassured the convention and the Constitution was approved in that state by the narrowest margin. New York soon followed, but submitted proposed amendments. Two states, Rhode Island and North Carolina, refused to ratify without a bill of rights.

Though the Federalists enjoyed a majority in Congress, it was clear that the people wanted a bill of rights. A year later in June of 1789, James Madison proposed a series of amendments to be debated in the first Congress.

Madison, then a member of the US House of Representatives, went through the Constitution itself, making changes where he thought most appropriate. But several Representatives, led by Roger

Sherman, objected that Congress had no authority to change the wording of the Constitution itself. Therefore, Madison's changes were presented as a list of amendments that would follow Article VII.

The House approved seventeen amendments. Of these seventeen, the Senate approved twelve. Those twelve were sent to the states for approval in August of 1789. Of those twelve, ten were quickly approved (or, ratified). Virginia's legislature became the last to ratify the amendments on December 15, 1791.

The Bill of Rights is a list of limits on government power. For example, what the Founders saw as the natural right of individuals to speak and worship freely was protected by the First Amendment's prohibitions on Congress from making laws

## WHY A BILL OF RIGHTS? (CONT.)

establishing a religion or abridging freedom of speech. For another example, the natural right to be free from unreasonable government intrusion in one's home was safeguarded by the Fourth Amendment's warrant requirements.

The Ninth Amendment protects all natural rights that are not listed in the Bill of Rights. Since it was impossible to list every right, the Ninth Amendment makes it clear that individual's rights are not confined to those in the first eight amendments. The Tenth Amendment reinforces the limited nature of the federal government, spelling out the fact that the powers not given to the federal government are kept by the states and the people (except for those powers the Constitution explicitly says states do not have).

The amendments in the Bill of Rights do not “give” anyone anything. On the other hand, Bill of Rights protections do stop the government from doing

certain things. This kind of limited government is the essence of liberty: the freedom to act without unauthorized restraint. Citizens have the right to pursue happiness, but as Benjamin Franklin is believed to have said, they have to “catch” it themselves.

The amendments appear in a certain order because of Madison's original changes to the Constitution. The rights in the First Amendment—Congress has no power to infringe on free religion, speech, press, assembly, and petition—were originally written by Madison as changes to Article I of the Constitution. The First Amendment was originally the third amendment, but the first two amendments were not ratified by the states in the 18<sup>th</sup> century, and so it became the First. (One of Madison's original amendments regulating the pay of Congressmen was eventually ratified in 1992 and became the Twenty-Seventh Amendment.)



## CRITICAL THINKING QUESTIONS

1. What was the Federalist position on the Constitution in 1787? What was the Anti-Federalist position?
2. Why was Madison concerned when Virginia and New York had not ratified the Constitution?
3. How did Madison first introduce amendments in Congress?
4. The Bill of Rights is a list of limits on government power. What does this reveal about the concept of liberty?

## FUNDAMENTAL RIGHTS?

**Directions:** *Delegates to a convention charged with creating a document for the protection of individual rights in the newly created nation, "Liberty," are stumped. Your committee must recommend to the general convention a listing of seven to ten rights that you believe are "fundamental," requiring protection from government action. You must be able to defend each of your recommendations to your fellow delegates.*

A right that must be protected is...

Because...

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## THE UNITED STATES BILL OF RIGHTS

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**Directions:** *Read the United States Bill of Rights and underline rights that are similar to the ones your group listed on **Handout A**.*

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**Amendment I**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

**Amendment II**

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

**Amendment III**

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

**Amendment IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Amendment V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of

law; nor shall private property be taken for public use, without just compensation.

**Amendment VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**Amendment VII**

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

**Amendment VIII**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Amendment IX**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**Amendment X**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

## YOU BE THE JUDGE!

**Directions:** *Read and discuss your assigned scenario below. Along with your group members, refer to **Handout B** to identify which protection(s) and amendment(s) are called into question. Then address the constitutional issue in the second question.*

## SCENARIO 1

Mary inherited a parcel of land on the outskirts of an Iowa town that has been in her family for generations. Even though her family has never utilized the land, she now wishes to build, along with her brothers, a small family restaurant on the inherited land. Mary applies for a building permit, and finds out that the Iowa legislature recently passed a law preventing further construction on land designated as “protected wetlands.” Her land, it turns out, is now designated as “protected wetlands,” and she is denied a building permit for any future building on the property.

- A. What protection(s) and amendment(s) are involved?

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- B. Should the State of Iowa pay Mary for the inability to use her land?

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## SCENARIO 2

The student body of Lakewood High School, a public school, took a vote. By a vast majority, they voted to conduct a student-led prayer over the public address system of their football stadium before the kick-off of each home game. They elected Paul, the student-body president, to conduct the non-denominational prayer. Jane, an atheist, objected. She was neither required to participate, nor punished for refusing. Nonetheless, Jane believes the public prayer itself to be unconstitutional.

- A. What protection(s) and amendment(s) are involved?

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- B. Should the students of Lakewood High School be allowed to vote on a prayer to be read publicly at games?

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## YOU BE THE JUDGE! (CONT.)

## SCENARIO 3

Benny has been found guilty of a heinous crime: attacking and killing his boss in a fit of rage. In the sentencing phase of his trial, Benny's lawyers produced two psychologists who testified to the fact that Benny was, in fact, mentally retarded. Benny's lawyers and psychologists argued that the jury should not be allowed to assign the death penalty as punishment for Benny's crimes. It was quite probable, the psychologists testified, that Benny did not fully understand the outcome of his actions, and while this fact does not absolve him of punishment, he should not be put to death.

- A. What protection(s) and amendment(s) are involved?

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- B. Should the jury be allowed to assign the death penalty as punishment for Benny's crime?

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## SCENARIO 4

Kate and Jim were ardent followers of the Amish faith, and, following Amish doctrine, did not wish to enroll their children in school beyond the 8<sup>th</sup> grade. Their state legislature, however, had passed a law requiring all children to attend school until age 16. Such a law, Kate and Jim believed, violated the duties required of them as an Amish family, and they refused to comply with the law. The state prosecuted and punished Kate and Jim for violating the law and refusing to send their children to school.

- A. What protection(s) and amendment(s) are involved?

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- B. Should Kate and Jim be prosecuted for refusing to send their children to school?

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## YOU BE THE JUDGE! (CONT.)

## SCENARIO 5

Darren was arrested on suspicion of kidnapping and rape. He was taken to the police station, where the victim picked Darren out of a lineup. An officer pointed to a woman in the police station and asked if she was the victim. Darren told them, "Yeah, that's her." The police then took him to an interrogation room where he was questioned for two hours. He verbally confessed to the crime, and signed a written statement, prepared by the police, admitting his guilt. Darren's confession included a statement that he was aware of his rights, and that any statements he made could be used against him. However, the police made little effort throughout the interrogation to allow Darren access to a lawyer, or generally notify of him of his rights.

- A. What protection(s) and amendment(s) are involved?

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- B. Should Darren's confession be allowed as evidence at trial?

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## SCENARIO 6

Elaine, a respected physician in the community, was accused of murdering her husband, Adam. Elaine continually maintained her innocence in Adam's death. The murder trial was a media sensation—reporters were in the courtroom, and were even assigned seats between the jurors and the defendant. The story was all over the local and state press for weeks. Editorials demanded a guilty verdict. The jury was not sequestered and had access to the media coverage. Elaine was found guilty. After her conviction, Elaine claimed that the extensive media coverage tainted her prosecution, and led to an unfair guilty verdict. She appealed her conviction, arguing that the media coverage biased the opinions of those in her community, requiring that her guilty verdict be overturned.

- A. What protection(s) and amendment(s) are involved?

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- B. Should Elaine's conviction for Adam's murder be overturned?

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## YOU BE THE JUDGE! (CONT.)

## SCENARIO 7

Sara, a public high school student, was caught smoking cigarettes in the school bathroom. The teacher who caught Sara took her to the principal's office, where a school official questioned her about whether she was smoking in the bathroom. She denied it. The principal, not believing her story, decided to take further action by looking into Sara's purse. He found a pack of cigarettes as well as a bag of rolling papers commonly associated with drug use. The official then decided to thoroughly search Sara's purse. He discovered a bag of marijuana and various papers that seemed to indicate that Sara was dealing marijuana. He placed Sara on suspension and called the police.

- A. What protection(s) and amendment(s) are involved?

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- B. Was it appropriate for the school official to examine the contents of Sara's purse?

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## SCENARIO 8

Matt was a prominent leader of the Ku Klux Klan. At a Klan rally, Matt advocated support for the Klan ideal of "white power." He gave a speech full of racial epithets. He also said, in an apparent threat, "If our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revenge taken." He was afterwards arrested for violating a state law that prohibited the advocacy of crime, sabotage, or violence as a means of accomplishing political reform. The law also prohibited the gathering of any society or group formed to teach or advocate such messages. Matt was fined \$1,000 and sentenced to ten years in prison.

- A. What protection(s) and amendment(s) are involved?

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- B. Should Matt have been arrested for his advocacy of, and rally for, Klan ideals?

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## OUTCOME DISCUSSION CARDS

## SCENARIO 1

**Court Ruling:** In *Lucas v. South Carolina Coast Council* (1992), the Supreme Court ruled that Lucas must be justly compensated for residential land that he had purchased in 1986. Lucas was prevented from constructing “habitable structures” under a 1988 South Carolina law designed to prevent erosion and destruction of the State’s barrier islands, where Lucas owned his land. The Court declared that “when the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good...he has suffered a taking...” and must be justly compensated.

## SCENARIO 2

**Court Ruling:** In *Santa Fe Independent School District v. Doe* (2000), the Supreme Court ruled that the school district had violated the Establishment Clause of the First Amendment by a policy authorizing, via a vote of the student body, a student-led, student-initiated prayer over the public address system prior to a football game. The school policy made the prayer “public speech,” not private, taking place on government property, with government sanction, at a government-sponsored event. “[T]he realities of the situation plainly reveal that [the district’s] policy involves both perceived and actual endorsement of religion.” The Court noted that the voting process did not make the prayer permissible, but in fact constituted religious coercion of the minority by the majority.

## OUTCOME DISCUSSION CARDS (CONT.)

## SCENARIO 3

**Court Ruling:** In *Atkins v. Virginia* (2002) the Supreme Court ruled that the execution of mentally retarded individuals constituted “cruel and unusual punishment.” The Court reasoned that since many states have discounted death as an appropriate punishment for the mentally retarded, due to their lessened accountability, an ‘evolving standard of decency’ dictated that it be deemed a violation of the Eighth Amendment. “[W]e therefore conclude that such a punishment is excessive and that the Constitution ‘places a substantive restriction on the state’s power to take the life’ of a mentally retarded offender.”

## SCENARIO 4

**Court ruling:** In *Wisconsin v. Yoder* (1972), the Supreme Court determined that the Wisconsin law mandating public school attendance until age sixteen violated the Exercise Clause by punishing those who chose not to send their children to school for religious reasons. The Court ruled that the individual right to free exercise of religion outweighed the state’s interest in ensuring that school children received what the state deemed a proper education, and that the values and curriculum of the public school setting were “in sharp conflict with the fundamental mode of life mandated by the Amish religion.”

## OUTCOME DISCUSSION CARDS

## SCENARIO 5

**Court ruling:** In *Miranda v. Arizona* (1966), the Supreme Court ruled that police were obligated to notify the accused of their rights to counsel and freedom from self-incrimination prior to any criminal interrogation. Further, the Court barred prosecutors from using, at trial, any evidence obtained during interrogation if it could not be shown that the police had made the accused aware of his rights under the Constitution. “The modern practice of in-custody interrogation is psychologically rather than physically oriented” and “the blood of the accused is not the only hallmark of an unconstitutional inquisition.”

## SCENARIO 6

**Court Ruling:** In *Sheppard v. Maxwell* (1966), the Court ruled that the pre-trial publicity, as well as the behavior of the media during the trial itself, had so biased the jury that jurors were rendered incapable of providing a fair and impartial decision. “Due process requires that the accused receive a trial by an impartial jury free from outside influences.” The Court reasoned that while the press plays an important role in the preservation of a “public” trial, it cannot be so intrusive that it fundamentally prevents the administration of justice. The Court noted that Sheppard’s trial judge should have taken measures to “place the interest of justice first,” ahead of the demands of the news media.

## OUTCOME DISCUSSION CARDS (CONT.)

## SCENARIO 7

**Court ruling:** In *New Jersey v. T.L.O.* (1985), the Supreme Court ruled that the search and seizure was constitutional and did not violate the student's Fourth Amendment rights. Citing a less-strict standard than is generally applicable to search and seizure claims, the Court decided that a standard of "reasonableness" be applied (as opposed to the "probable cause" the Fourth Amendment requires for search warrants to be issued) due to the nature of the school environment. "The initial search for cigarettes was reasonable ... the discovery of the rolling papers then gave rise to a reasonable suspicion that respondent was carrying marijuana ... and this suspicion justified the further exploration that turned up more evidence of drug-related activities."

## SCENARIO 8

**Court ruling:** In *Brandenburg v. Ohio* (1969), the Supreme Court ruled that Ku Klux Klan leader Brandenburg's right to free speech had been violated by an Ohio law that sought to criminalize public speech that advocated "crime, sabotage, violence ... as a means of accomplishing ... political reform." In its ruling, the Court applied a two-part test, allowing such speech to be prohibited only if it is (a) "directed at inciting or producing imminent lawless action," and (b) "likely to incite or produce such action." The Court reasoned that since Ohio's law made the mere advocacy and teaching of such doctrine illegal without taking into consideration whether the speech would actually lead to "imminent lawless action," the law was too broad and criminalized speech in a manner that violated the First Amendment.

## THE BILL OF RIGHTS TODAY

**Directions:** Complete the graphic organizer below by locating news articles about issues related to the Bill of Rights today. Begin by searching the Bill of Rights Institute Web site, [www.BillofRightsInstitute.org](http://www.BillofRightsInstitute.org). Click on the “Bill of Rights in the News” link. You may use other newspapers and periodicals. Attach article or printouts to this page.

Headline / Topic of Article	Summary of Article	Related Amendment	Ways this Issue Might Touch My Life
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**Background Essay: Why a Bill of Rights?***Critical Thinking Questions*

1. Federalists supported ratification of the Constitution, and held that a bill of rights was not needed because the states and the people kept all the powers not given to the federal government. Anti-Federalists argued against ratification, holding that a bill of rights was necessary to protect individual liberty.
2. Though nine states had already ratified, Madison was concerned that Virginia and New York's failure to ratify would cast serious doubts on the Constitution.
3. Madison first introduced amendments in Congress as changes within the body of the Constitution itself.
4. Liberty is freedom from unauthorized restraint. That the Bill of Rights is a list of limitations on government power reveals that the concept of liberty depends on limited government. The Bill of Rights gives nothing to an individual other than the ability to pursue happiness with the freedom from unreasonable government interference.

**Handout C: YOU Be the Judge!**

- Scenario 1: just compensation for taken property, Fifth Amendment
- Scenario 2: freedom from government-established religion, First Amendment
- Scenario 3: no cruel and unusual punishment, Eighth Amendment
- Scenario 4: free religious exercise, First Amendment
- Scenario 5: right against self-incrimination, Fifth Amendment; right of the accused to have access to counsel, Sixth Amendment
- Scenario 6: due process, Fifth Amendment; right to a fair trial by impartial jury, Sixth Amendment; related issues: freedom of the press, First Amendment; public trials, Sixth Amendment
- Scenario 7: freedom from unreasonable searches and seizures, Fourth Amendment
- Scenario 8: freedoms of speech and assembly, First Amendment